IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 393 of 2007.

Reserved on: 08.11.2007.

Decided on: 29.11.2007.

M/s Jawala Stone Crusher.	**…**	**…**	**Petitioner.**
Versus			
Sh. Swaran Singh & Others.	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner:	**Mr. Rahul Mahajan, Advocate.**
For Respondent No.1:	**Mr. O.P. Sharma, Advocate.**
For Respondents No.2 & 3:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan, Deputy Advocate General.**

Rajiv Sharma, Judge:

A challenge has been laid by the petitioner to the appellate order passed by the Joint Labour Commissioner-cum-Appellate Authority under the Payment of Gratuity Act, 1972 on 29th August, 2006.

The brief facts necessary for the adjudication of this petition are that the respondent No.1 (hereinafter referred to as the workman for convenient sake) had submitted his gratuity claim in the prescribed proforma on 14.10.2003. He had primarily contended in his claim that he had worked as driver with the employer with effect from 18.4.1993 to

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Whether reporters of local papers may be allowed to see the judgment? Yes.

9.7.2003, but he has not been paid the gratuity. The Labour Officer-cum-Controlling Authority had framed the following issues:-

"1. Whether the provisions of the Payment of Gratuity Act, 1972 and The Payment of Gratuity (Himachal Pradesh) Rules, 1972 (hereinafter written Act and Rules respectively) are applicable to the Respondent as per Section 1(3) of the Act?

2. Whether the Applicant is an 'Employer within the meaning of Section 1(e) of the Act?

3. Whether the Representation of parties is in accordance with the provisions contained in Rule11 (2) of the Rules and affect the decisions?

4. Whether the Applicant has other alternative to get his claim determined and paid?

5. Orders/Relief"?

Issues No.1 and 2 were decided in favour of the workman. Similarly, issues No.3 and 4 were decided in the affirmative, that too in favour of the workman. The Labour Officer-cum-Controlling Authority vide order dated 7.11.2004 held that the workman was entitled to be paid by the petitioner a sum of Rs.16,650/- on or before 18.8.2003 and thereafter the workman was held entitled to interest at the rate of 5% per annum on the principal amount of Rs.16,650/- with effect from 10.10.2003 till the payment was made. The petitioner, i.e. the employer preferred an appeal against the order dated 23.3.2005 before the Joint Labour Commissioner-cum-Appellate Authority under sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act). The appeal was dismissed by the Joint Labour Commissioner-cum-Appellate Authority on 29th August, 2006. The appellate Authority besides up-holding the order dated 23.3.2005 passed by the Controlling Authority also granted interest at the rate of 10% per annum with effect from 10.8.2003

under Sub-Section (3)(a) of Section 7 of the Act. Consequently, the employer was directed to make the payment of Rs.18,915/- to the workman.

Mr. Rahul Mahajan, Advocate had argued that the appellate order is not a speaking order. He also contended that the Appellate Authority had blurtly up-held the order of the Controlling Authority without taking into consideration the grounds raised by his client in the appeal. Mr. O.P. Sharma had supported the orders passed by the Controlling Authority as well as Appellate Authority.

I have heard the learned counsel for the parties and perused the record.

The case set out by the workman before the Controlling Authority was that he had worked with the employer with effect from 18.4.1993 to 9.7.2003 as a driver and was entitled to gratuity as per the provisions of the Gratuity Act, 1972. The employer had denied his engagement as driver except for two months, i.e. July and August, 2002. The Controlling Authority had answered all the issues framed in affirmative in favour of the workman.

The employer had assailed the order passed by the Controlling Authority inter-alia on the following grounds:-

(i) that the Controlling Authority had failed to appreciate the documents placed on record by the employer; and

(ii) that the claim for gratuity was not maintainable preferred by the workman in view of Section 1(3)(b) and (c) read with Section 7 of the Payment of Gratuity Act, 1972 and Rule 7 of the Payment of Gratuity (Central Rules), 1972 since the claim was to be preferred within 30 days.

The calculations made by the Controlling Authority were also assailed in the appeal. The payment of interest by the Controlling Authority was also challenged before the Appellate Authority.

It is evident from the order passed by the Appellate Authority that he had noted the submissions made by the appellant, i.e. the petitioner and the submissions made by the workman and thereafter abruptly up-held the findings of the Controlling Authority without assigning any reasons. The Appellate Authority was required to go into the submissions made by the employer on the basis of the grounds taken in appeal. The petitioner had disputed the period for which the workman had worked with him. According to the employer, the workman had only worked for two months, i.e. July and August, 2002 and as per the case set out by the workman, he had worked for 10 yeas with effect from 18.4.1993 to 9.7.2003. This question was required to be gone into by the Appellate Authority, which admittedly has been brushed aside by the Appellate Authority. The Appellate Authority was also bound to take into consideration the applicability of the claim preferred by the workman in view of Section 1(3)(b) and (c) of the Payment of Gratuity Act, 1972. Besides this, the other grounds as enumerated above were also not taken into consideration by the Appellate Authority while up-holding the order of the Controlling Authority. It is now well-settled that the Appellate Authority is required to pass a speaking and reasoned order and the specific averments made and grounds taken in the appeal are required to be taken into consideration.

Their Lordships of the Hon'ble Supreme Court have held in ***The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and another, AIR 1976, Supreme Court 1785*** that quasi-judicial order must be supported by reasons. Their Lordships have held as under:-

"Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Tessteels Ltd., C.A. No.245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-

judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs Authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

The Hon'ble Supreme Court has held in ***State of West Bengal v. Atul Krishna Shaw and another, AIR 1990 Supreme Court 2205*** that unless adequate reasons are given, merely because it is an appellate

authority, it cannot brush aside the reasoning or findings recorded by the primary authority. Their Lordships have held as under:-

> **"The appellate authority being final authority on facts is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why he disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority."**

The Apex Court in ***Narinder Mohan Arya vesus United India Insurance Co. Ltd. and others, (2006) 4 SCC 713*** has held as under:-

> ***"*An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.**
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> **In Apparel Export Promotion Council V. A.K. Chopra which has heavily been relied upon by Mr. Gupta, this Court stated: (SCC p. 770, para 16)**
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> > **"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities."**
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> > **(emphasis supplied)**
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> **The Appellate Authority, therefore, could not ignore to exercise the said power.**

The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider' is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

In R.P. Bhatt V. Union of India this Court opined: (SCC p. 654, paras 4-5)

> **"4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.**
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> **"5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the**

Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

In para 13 of the memorial the appellant at the first opportunity raised a contention that the order of the Appellate Authority was not a speaking order at all, besides drawing the attention of the Chairman-cum-Managing Director to the subsequent event namely the judgment and decree passed by the civil court. The said authority again did not apply its mind while passing his order dated 31-3-1981. When such a contention was raised, it was obligatory on the part of the Chairman-cum-Managing Director while exercising its statutory jurisdiction to show that he had applied his mind to the contentions raised. Such application of mind on his part is not apparent from the order. The departmental proceedings are quasi criminal in nature."

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> **"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities."**
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"5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

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Consequently, the order dated 29th August, 2006 is quashed and set aside and the matter is remanded back to the Joint Labour Commissioner-cum-Appellate Authority to decide the appeal afresh strictly in accordance with law within a period of three months from the receipt of the certified copy of the judgment. To avoid delay, the parties are directed to appear before the Joint Labour Commissioner-cum-Appellate Authority on December 17, 2007. No order as to costs.

November 29, 2007. **(Rajiv Sharma),**
(sck) **Judge.**